

GORDON H. DePAOLI
Nevada State Bar No. 00195
DALE E. FERGUSON
Nevada State Bar No. 4986
DOMENICO R. DePAOLI
Nevada State Bar No. 11553
WOODBURN AND WEDGE
6100 Neil Road, Suite 500
Reno, Nevada 89511
Telephone: 775 / 688-3000

Attorneys for WALKER RIVER IRRIGATION
DISTRICT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	3:73-cv-00127-MMD-WGC
)	
Plaintiff,)	
)	STIPULATION AND ORDER
WALKER RIVER PAIUTE TRIBE,)	AMENDING ORDER
)	REGARDING DISCOVERY AND
Plaintiff-Intervenor,)	MOTION SCHEDULE AS
)	PREVIOUSLY AMENDED
v.)	
)	
WALKER RIVER IRRIGATION DISTRICT,)	
a corporation, et al.,)	
)	
Defendants.)	

1. On March 16, 2020, the Court entered the Order Regarding Discovery and Motion Schedule and Procedure (the "Order"). ECF 2611.

2. On December 28, 2020, a Stipulation and Order Amending Order Regarding Discovery and Motion Schedule was entered (the "Amendment to the Order"). ECF 2648

3. The Amendment to the Order was concerned with and addressed the fact that the historical expert engaged by the Principal Defendants to provide a response to the Historical Reports of the United States and Tribe and perhaps also to provide an opening expert report on historical matters which may not be directly addressed in the Historical Reports of the United States and Tribe, was not able to undertake her research plan because the several repositories

1 holding manuscript collections critical to her research and assignments in this matter were and
2 for some time prior had been and then remained closed due to the Covid-19 Pandemic, making
3 archival research progress (outside of digitally available records) impossible.

4 4. At that time, the Principal Defendants' historical expert had been waiting for the
5 following archive/records offices to reopen: the National Archives - Riverside; National
6 Archives – San Bruno; National Archives – DC/College Park; California State Archives;
7 Nevada State Archives; and the Water Resource Center Archives at the University of California
8 (the "Archive / Records Offices"). The National Archives –Seattle has been added to and
9 should now be included in the Archive / Records Offices.

10 5. Pursuant to the Amendment to the Order, since February 1, 2021, and
11 continuing to September 1, 2021, the Principal Defendants have reported to the Plaintiffs'
12 Counsel and to the Court concerning the status of access to each of the Archive/Records
13 Offices.

14 6. The most recent Report advised:

15 As noted in the August 2, 2021 report, on July 16, 2021 the National
16 Archives Records Administration (NARA) issued a press release stating that it
17 was starting to resume research operations, and that starting Monday, August 2,
18 2021, most National Archives research rooms would reopen for research on a
19 limited basis. However, on or about August 16, 2021, National Archives in
20 Washington, D.C. announced it was again closed with no information on when it
21 might reopen. The National Archives, College Park, Md, the National Archives,
22 San Bruno, the National Archives, Riverside and the National Archives, Seattle
are all closed, also with no information on when they might reopen. All of these
facilities offer the following information on their websites: "once public health
conditions improve, and we are able to reopen our research room, we will
update our website with additional information." As of this date none have
reopened.

23 As of September 1, 2021, the Nevada State Archives continues to be open with
24 limited hours from 10:00 AM to 2:00 PM on business days. As of September 1,
25 2021, the other Archive/Records Offices as defined in said Order and not
mentioned above remain closed.

26 See ECF 2674 at 1

27 7. The Amendment to the Order suspended the January 29, 2021 due date for the
28 Principal Defendants' Responsive Historical Report and Opening Historical Report.

8. The Amendment to the Order also provided that the date of Plaintiffs' Response to the Principal Defendants' Opening Historical Report, if any, is also suspended to a date which is 60 days after the Principal Defendants Opening Historical Report is served, the date for Plaintiffs' Rebuttal to the Principal Defendants' Responsive Historical Report is also suspended to a date which is 60 days after the Principal Defendants' Responsive Historical Report is served and that the date for Principal Defendants' Rebuttal to Plaintiffs' response to Principal Defendants' Opening Historical Report is also suspended to a date which is 60 days after Plaintiffs' Responsive Report is served.

9. The Amendment to the Order further provided that the depositions of experts whose opening, responsive and/or rebuttal reports are delayed by this Stipulation shall be delayed until the last of such reports have been served. In the event insufficient time exists to complete such depositions within the discovery period, Plaintiffs and Principal Defendants will seek appropriate relief from the Court.

10. The Amendment to the Order further provided that the schedule for and expert report sequence for all other opening, responsive and rebuttal expert reports are not modified by this Stipulation and Order, and shall remain as provided therein and in the following table:

<u>Non-Historical Expert Sequence</u>			
Plaintiffs' Opening	August 14, 2020		
Defendants' Response	January 29, 2021	Defendants' Opening	January 29, 2021
		Plaintiffs' Response	March 26, 2021
Plaintiffs' Rebuttal	April 30, 2021	Defendants' Rebuttal	April 30, 2021

11. The requirements of that schedule have been met.

12. The Amendment to the Order also provided that if the author of one or more of the non-historical expert reports which will be provided on the current schedule later becomes aware of information obtained from archival research which is the result of the facilities reopening and which, in their judgment, is relevant to their opinions, they may supplement their reports and opinions within 30 days.

1 13. In addition to meeting the schedule set forth in the table above for non-
2 Historical Expert Reports, Plaintiffs and the Principal Defendants have engaged in significant
3 written discovery.

4 14. As noted above, with the exception of the Nevada State Archives which is open
5 with limited hours, all of the other archive repositories remain closed with considerable
6 uncertainty as to when they might reopen.

7 15. The Plaintiffs and Principal Defendants have conferred and agree that the Order
8 and the Amendment to the Order should be modified in light of the foregoing circumstances.

9 NOW, THEREFORE, pursuant to Paragraphs 14 and 16 of the Order, the parties hereby
10 stipulate and agree as follows:

11 1. Because the expert engaged to prepare the Principal Defendants' Responsive
12 Historical Report and the Principal Defendants' Opening Historical Report needs access to the
13 Archive/Records Offices, the due date for those reports remains suspended.

14 2. The suspension provided for in Paragraph 1 of this Stipulation will continue
15 until an appropriate date determined by the Court. This date shall be a date after the reopening
16 date of the Archive/Records Offices to which the Principal Defendants' historical expert is
17 awaiting access. In establishing this date, consideration will be given to the date of such
18 reopenings, when the expert has been allowed access, obtained and reviewed materials, and the
19 time needed to complete a report based upon the expert's then schedule. In light of the
20 unexpected delay occasioned by the Covid-19 Pandemic circumstances, the Principal
21 Defendants' historical expert shall take all reasonable steps, consistent with her then
22 availability, to work expeditiously to access the Archive/Records Offices, and to complete the
23 Principal Defendants' Responsive Historical Report and the Principal Defendants' Opening
24 Historical Report.

25 3. On the first judicial day of each month thereafter, the Principal Defendants will
26 continue to report to the Plaintiffs' Counsel and to the Court concerning the status of access to
27 each of the Archive/Records Offices.

28 4. The Plaintiffs will share with the Principal Defendants any information which

they may have concerning access to the Archive/Records Offices on the same schedule.

5. The date for Plaintiffs' Response to the Principal Defendants' Opening Historical Report, if any, continues to be suspended to a date which is 60 days after the Principal Defendants' Opening Historical Report is served.

6. The date for Plaintiffs' Rebuttal to the Principal Defendants' Responsive Historical Report continues to be suspended to a date which is 60 days after the Principal Defendants' Responsive Historical Report is served.

7. The date for Principal Defendants' Rebuttal to Plaintiffs' response to Principal Defendants' Opening Historical Report is also suspended to a date which is 60 days after Plaintiffs' Responsive Report is served.

8. The date for close of all forms of discovery allowed by the Federal Rules of Civil Procedure, including all depositions, whether of historical experts or not, as provided in paragraph 2.b of the Order is extended from January 31, 2022 to July 31, 2022.

9. Depositions of experts whose opening, responsive and/or rebuttal reports are delayed by this Stipulation shall be delayed until the last of such reports have been served. In the event insufficient time exists to complete such depositions within the discovery period as extended, Plaintiffs and Principal Defendants will seek appropriate relief from the Court.

10. If the author of one or more of the non-historical expert reports which were previously provided later becomes aware of information obtained from archival research which is the result of the facilities reopening and which, in their judgement, is relevant to their opinions, they may supplement their reports and opinions within 30 days.

Dated: September 14, 2021.

WOODBURN AND WEDGE

By: /s/ Gordon H. DePaoli
Gordon H. DePaoli
Nevada Bar No. 195
6100 Neil Road, Suite 500
Reno, Nevada 89511
*Attorneys for Walker River Irrigation
District*

U.S. DEPARTMENT OF JUSTICE

By: /s/ Guss Guarino
(per authorization)
Guss Guarino, Trial Attorney
Tyler J. Eastman, Trial Attorney
Marisa J. Hazell, Trial Attorney
Environment and Natural Resources Div.
999 18th Street, Suite 370
Denver, Colorado 80202

LAW OFFICES OF WES WILLIAMS, JR.,
P.C.

By: / s / Wes Williams, Jr.
(per authorization)

Wes Williams, Jr., NSB 6864
3119 Lake Pasture Rd.
P.O. Box 100
Schurz, Nevada 89427

MEYER, WALKER, CONDON &
WALKER, P.C.

Alice E. Walker
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
Attorneys for Walker River Paiute Tribe

OFFICE OF THE ATTORNEY GENERAL
OF CALIFORNIA

By: / s / Nhu Q. Nguyen
(per authorization)

Nhu Q. Nguyen, NSB 7844
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, California 94244-2550
Attorneys for California State Agencies

STATE OF NEVADA OFFICE OF THE
ATTORNEY GENERAL

By: / s / Anthony J. Walsh
(per authorization)

Anthony J. Walsh, NSB 14128
Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701-4717
Attorneys for Nevada Department of Wildlife

David L. Negri
Trial Attorney, Natural Resources Section
c/o U.S. Attorney's Office
800 Park Boulevard, Suite 600
Boise, Idaho 83712
Attorneys for United States of America

ADVOCATES FOR COMMUNITY &
ENVIRONMENT

By: / s / Simeon Herskovits
(per authorization)

Simeon Herskovits, NSB 11155
Iris Thornton
P.O. Box 1075
El Prado, New Mexico 87529
Attorneys for Mineral County
BEST BEST & KRIEGER

By: / s / Roderick E. Walston
(per authorization)

Roderick E. Walston
2001 N. Main Street, Suite 390
Walnut Creek, California 94596

Jerry Snyder, NSB 6830
429 W. Plumb Lane
Reno, Nevada 89509
Attorneys for Lyon County

THE COUNTY OF MONO (CA)

By: / s / Stacey Simon
(per authorization)

Stacey Simon, County Counsel
Emily Fox, Dep. County Counsel
P.O. Box 2415A
Mammoth Lakes, California 93546-2415
Attorneys for Mono County

SCHROEDER LAW OFFICES, P.C.

SIMONS HALL JOHNSTON PC

By: / s / Therese A. Ure
(per authorization)

By: / s / Brad Johnston
(per authorization)

Therese A. Ure, NSB 10255
10615 Double R Boulevard, Suite 100
Reno, Nevada 89521
Attorneys for The Schroeder Group

Brad M. Johnston, NSB 8515
22 State Route 208
Yerington, Nevada 89447
*Attorneys for Desert Pearl Farms, Peri
Family Ranch, LLC, Peri & Peri LLC, and
Frade Ranches*

ORDER

Dated: September 15, 2021, 2021. IT IS SO ORDERED.

William G. Cobb

William G. Cobb
United States Magistrate Judge